

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

OCTOBER 14, 2008

President Stephen Murphy called the meeting to order at 10:00 A.M. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Stephen Murphy, President, David Murphy, Vice President, Dennis Hamilton, Paula Bridges, Jill Horner, Eugene Williams and John Ray Clemmons.

Staff members present were Robert Gribble, Executive Director, Adrian Chick, Staff Attorney and Jimmy Gossett, Administrative Assistant.

WORK SESSION FOR RULES DISCUSSION:

President Steve Murphy suggested that a rules discussion work session be delayed until immediately after the conclusion of the December 2008 board meeting.

ADOPTION OF AGENDA:

A motion was made by Mr. David Murphy to approve the agenda as printed.

Seconded by Mr. Eugene Williams

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Ms. Jill Horner to approve the minutes of the September 9, 2008 Board Meeting.

Seconded by Ms. Paula Bridges

Adopted by voice vote

LEGAL REPORT:

ADRIAN CHICK, STAFF ATTORNEY

1. **Case No.: L08-FUN-RBS-2008019481**

An inspection on July 7, 2008 revealed that an authorization for cremation form had been signed by an unlicensed individual, and a Statement of Funeral Goods and Services Selected failed to provide a description of merchandise chosen.

The respondent states that it had instructed an employee to take the form to the family to obtain their signature, and the employee mistakenly thought he was signing as a witness to their signature.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Ms. Jill Horner to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

2. Case No.: L08-FUN-RBS-2008019471

An inspection on June 24, 2008 revealed the following violations:

- TCA 62-5-306(d) – Current license of three (3) funeral directors were not available for inspection; and
- TCA 62-5-107(2) – A copy of the license and latest inspection report for the crematory used was not available at the time of inspection.

The inspection report is now available for inspection. The three missing licenses were faxed immediately, during inspection, and presented to the inspector.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

3. Case No.: L08-FUN-RBS-2008020011

An inspection on July 7, 2008 revealed the following violations:

- TCA 62-5-306 – The current license of a funeral director was not available for inspection;
- FTC Rules – Casket price range on the casket price list was different than on the General Price List;
- FTC Rules – Outer burial container price range was wrong on the General Price List;
- FTC Rules – Immediate Burial price on the General Price List was incorrect;
- FTC Rules – Two caskets in the selection room were not listed correctly on the Casket Price List; and
- FTC Rules – Two outer burial containers in the selection room were listed incorrectly on the Outer Burial Container Price List.

The establishment has undergone a change in management and all the above issues have been resolved.

Complaint History: None.

Recommendation: Consent order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

4. Case No.: L08-FUN-RBS-2008017511

An inspection on July 24, 2008 revealed the following violations:

- FTC Rules – Price for direct cremations with customer providing container is incorrect; and
- FTC Rules – Price range for outer burial containers is incorrect.

The establishment has submitted updated price lists.

Complaint History: Numerous, but all closed.

Recommendation: Letter of Warning for FTC violations.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

5. Case No.: L08-FUN-RBS-2008018661

An inspection on August 5, 2008 revealed the following violations:

- FTC Rules – Price range for outer burial containers is incorrect; and
- FTC Rules – Upper range under Immediate Burial is incorrect.

Response: The establishment had just received a new casket the evening prior to the inspection and had not yet had an opportunity to update the price lists.

Complaint History: Numerous, but all closed.

Recommendation: Letter of Warning for FTC violations.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Ms. Paula Bridges

Adopted by voice vote

6. Case No.: L08-FUN-RBS-2008017861

This complaint was filed by a trade embalmer who alleges that he performed services for the respondent establishment and was not paid, and that the establishment had failed to pay him because he would not place a body in a casket that was too small.

The Respondent denies the allegations regarding the casket being too small and has paid the trade embalmer.

Complaint History: None related.

Recommendation: Dismiss.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Paula Bridges

Adopted by voice vote

7. Case No.: L08-FUN-RBS-2008019791

An inspection on August 27, 2008 revealed the following violations:

- TCA 62-5-306 – The current funeral director license of the manager was not available for inspection;
- TCA 62-5-308 – The current license of an embalmer was not available for inspection;
- TCA 62-5-107 – The current license of the crematory used was not available for inspection;
- TCA 62-5-107 – A cremation file was checked and the authorization form with information required by statute was not present;
- FTC Rules – Upper range under Immediate Burial is incorrect; and
- TCA 62-5-107 – Failure to maintain copy of license and inspection report of crematory used.

The respondent submitted updated documents to show that the above violations have been corrected.

Complaint History: 200502510 – Respondent paid a civil penalty of \$250 for failure to affix permanent identification device, failure to make available for inspection a funeral director license and an embalmer license, and two FTC violations.

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

8. Case No.: L08-FUN-RBS-2008006061

The Respondent advertised a package price without an itemization in violation of TCA 62-5-106.

The Respondent states that the violation has been corrected.

Complaint History: Numerous.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Mr. Eugene Williams to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

9. Case No.: L08-FUN-RBS-2008003561

An inspection on January 29, 2008 revealed the following violations:

- TCA 62-5-107(c) – Required cremation authorization form missing; and
- FTC Rules – The establishment's Statement of Funeral Goods and Services Selected indicates a charge for washing and disinfecting when the body is embalmed. Three of the eight forms inspected contained this charge.

The Respondent states that the violations have been corrected.

Complaint History: Numerous.

Recommendation: Consent Order assessing civil penalty of \$750 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

10. Case No.: L08-FUN-RBS-2008010411

11. Case No.: L08-FUN-RBS-2008010421

A telephone directory has a listing for an unlicensed establishment. The establishment has not applied for licensure.

The Respondent states that an effort was underway to obtain a property and convert it to use as an establishment, but the deal could not be completed. The listing had been requested in advance so that the publishing date of the telephone directory would coincide with the expected opening of the establishment. The number was never "activated". The Respondent apologizes for its decision.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$500 against individual respondent for unlicensed conduct and authorization for a hearing and Dismiss Complaint No. 2008010411 since no establishment exists.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

12. Case No.: L08-FUN-RBS-2008019351

An inspection on June 17, 2008 revealed the following violations:

- FTC Rules – Charges on Statement of Funeral Goods and Services Selected are inconsistent with prices on General Price List;
- FTC Rules – Prices on General Price List are inconsistent with those on the Casket Price List and Outer Burial Container Price List;
- FTC Rules – Seven caskets in selection room are priced inconsistent with the Casket Price List;
- FTC Rules – Casket Price List does not include alternative container;
- FTC Rules – Casket Price List does not have an effective date;
- FTC Rules – Prices listed on General Price List for immediate burial and direct cremation are incorrect; and
- TCA 62-5-107(c)(3)(c) – Cremation authorization form is not signed by a funeral director.

No response received.

Complaint History: 200707516 – Civil penalty of \$250 paid (FTC Rules – Prices shown for Immediate Burial are inconsistent with prices on General Price List, and Outer Burial Container price range of General Price List is inconsistent with Outer Burial Container Price List).

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

Mr. Steve Murphy suggested that the civil penalty be increased to \$1500 based on the fact that the establishment had the same violations in 2007.

A motion was made by Ms. Paula Bridges to assess a civil penalty of \$1500 and an authorization for a hearing.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

13. Case No.: L08-FUN-RBS-2008019861

An inspection on August 26, 2008 revealed the following violations:

- TCA 62-5-306(d) – The current license of two funeral directors were not available at the time of inspection;
- TCA 62-5-308 – The current license of an embalmer was not available at the time of inspection;
- TCA 62-5-107 – Current license of the crematory used was not available at time of inspection;
- TCA 62-5-104 – A casket in the selection room lacked a description of the material used for construction;
- FTC Rules – A casket offered in the selection room was not listed on the Casket Price List; and
- FTC Rules – The Casket Price List does not list alternative containers.

Respondent states that the funeral director licenses were not displayed due to a delay in receiving them from the State. The embalmer whose license was not available for inspection no longer embalms, but his license was not posted due to a delay in receiving it from the State. Failure to have a copy of the crematory license was an oversight and has been corrected. The FTC violations were the result of clerical or computer errors and have been corrected. A description of the casket was not provided by the manufacturer, but the information was on a price sheet that was lying inside the casket. A label has also been added to the casket.

Note: The Executive Director states that two of the licenses were approved on July 6, 2008 and the other on June 25, 2008, and that both were mailed thereafter and would have been received well in advance of the August 26, 2008 inspection.

Complaint History: 200707516 – Civil Penalty of \$250 paid (FTC Rules – Prices shown for immediate burial are inconsistent with prices on General Price List, and Outer Burial Container price range of General Price List is inconsistent with Outer Burial Container Price List).

Recommendation: Consent Order assessing civil penalty of \$750 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

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14. Case No.: L08-FUN-RBS-2008006921
 15. Case No.: L08-FUN-RBS-2008006931
 16. Case No.: L08-FUN-RBS-2008006941

During the course of a routine inspection, the establishment displayed a license certificate. The inspector immediately questioned the authenticity of the certificate because it stated "FUNERAL DIRECTOR & EMBALMER", and Tennessee has never had a dual licensing system. It was later confirmed that the certificate was invalid and had not been issued to the alleged licensee. Complaint No. 2008006921 was opened against the establishment, Complaint No. 2008006931 was opened against the owner of the establishment whose license was apparently used to make the falsified document, and Complaint No. 2008006941 was opened against the alleged licensee.

The establishment responded that the alleged licensee had provided the certificate and that the establishment believed it to be valid. However, the alleged licensee has never performed any work as either a funeral director or embalmer for the establishment. The individual respondent whose license had been copied responded that he has no knowledge of the license status of the alleged licensee, and that the alleged licensee is an acquaintance of his son. He also states that a copy of the complaint was hand delivered to the alleged licensee. There was no response from the alleged licensee.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$500 against the establishment for violation of TCA 62-5-309 (practice by unregistered persons prohibited) and authorization for hearing. Dismiss complaint against individual whose license was copied. An authorization for hearing against alleged licensee.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

17. Case No.: L08-FUN-RBS-2008017801

This complaint was filed by a consumer and alleges that the Respondent establishment failed to deliver the remains to a second location for viewing as agreed because the Respondent did not have a casket. According to the complainant, the Respondent was offered the use of a casket by the second location but declined to accept this offer.

The Respondent states that it discussed the arrangements with the family during the morning, and the family requested that the body be transported to a second location for viewing at 5:00 P.M. that same day. The Respondent contacted the casket supplier in Nashville who assured Respondent that it could have the casket delivered by 3:00 P.M. The Respondent then informed the family that the body could in fact be transported to the second location for viewing at 5:00 P.M. However, the casket arrived two hours later than the supplier had stated. The

Respondent was hesitant to place the body in a casket other than the one ordered by the family. The viewing was held at 7:00 P.M.

Complaint History: None related.

Recommendation: Dismiss.

A motion was made by Mr. Eugene Williams to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

18. Case No.: L08-FUN-RBS-2008020171

This complaint was filed by another funeral establishment regarding an advertisement in a local visitor's guide which states that the establishment is "Family owned and operated since 1879". The complainant alleges that this statement is untrue since the establishment was sold in 1995. Also, the complainant alleges that the Respondent is owned by a number of unrelated individuals that are only related by the establishments they own. The complainant alleges that the word "family" is considered singular, meaning that one "related" family owns the business, and alleges that the advertisement therefore constitutes false or misleading advertising.

The Respondent states that the publisher printed the visitor guides and that the Respondent had requested the publisher to change the motto. The Respondent states that it has been continuously operated by one of the two families listed in the name of the establishment since 1879, although the firm was sold in 1995.

Complaint History: None related.

Comments by Legal: Webster's Dictionary online contains several definitions of "family", one of which is "a group of people united by certain convictions or a common affiliation".

Recommendation: Dismiss. No violation established.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Paula Bridges

Adopted by voice vote

19. Case No.: L08-FUN-RBS-2008020041

An inspection on August 26, 2008 revealed the following violations:

- TCA 62-5-107 – Cremation authorization form lacks the required information;
- TCA 62-5-317 – Business card posted on bulletin board by the establishment lists an establishment name that differs from the licensed name; and
- FTC Rules – Price for alternative container on the General Price List is different than that listed on the Casket Price List.

The Respondent is currently handwriting the required information on the cremation authorization forms until the form can be updated. The General Price List has been updated. The business card with the incorrect establishment name has been removed.

Complaint History: 200603191 – Civil penalty of \$500 paid for FTC violations and failure to provide necessary information on cremation authorization forms. (Respondent provided a nearly identical response regarding the forms.)

Recommendation: Consent Order assessing civil penalty of \$1000 and authorization for hearing.

A motion was made by Mr. Eugene Williams to accept Counsel's recommendation.

Seconded by Mr. Dennis Hamilton

Adopted by voice vote

20. Case No.: L08-FUN-RBS-2008013971

An inspection on May 20, 2008 revealed the following violations:

- FTC Rules – The range on the General Price List does not match the corresponding range on the Outer Burial Container Price List;
- FTC Rules – The price listed under Immediate Burial with cardboard container on the General Price List does not match Casket Price List;
- FTC Rules – Description of funeral goods and services omitted on several Statements of Funeral Goods and Services;
- FTC Rules – A steel vault listed on the Outer Burial Container Price List is higher than the price in the selection room; and
- TCA 62-5-107 – Seven cremation files lacked a cremation authorization form.

The Respondent has submitted updated price lists and cremation authorization forms.

Complaint History: None

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

21. Case No.: L08-FUN-RBS-2008019491

An inspection on July 8, 2008 revealed the following violations:

- FTC Rules – Alternative container(s) are not listed on the Casket Price List;
- FTC Rules – Six caskets in the selection room were not listed on the Casket Price List; and
- FTC Rules – Four Statements of Funeral Goods and Services lack required description of merchandise and services.

The Respondent has made every effort to correct all short falls. The General Price List was updated to include alternative containers.

Complaint History: 200604461 – Civil penalty of \$250 paid (failure to include alternative containers on Casket Price List).

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

22. Case No.: L08-FUN-RBS-2008019001

This complaint was filed by family members of the decedent. The complaint alleges that the funeral home employee who removed the body from the hospital was "very distant, cold and showed no compassion towards the feelings of loss

my sisters were experiencing", and he failed to identify himself, although when asked if he was from the funeral home, he responded "yes". When asked if the funeral home was going to take care of the decedent, he stated "we always take care of our clients". Use of the word "clients" offended the family. The complainant states that the Respondent embalmed the body without getting verbal or written permission, and the hands were placed at the decedent's sides, instead of left over right.

The Respondent states that the employee making the removal is rather shy but a very compassionate person, and probably were nervous and forgot to ask for permission to embalm. The family was not charged for either the removal or embalming.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

23. Case No.: L08-FUN-RBS-2008008251

An inspection on March 10, 2008 revealed the following violations:

- TCA 62-5-313(d)(1) – Casketed remains lacked the required identification device;
- TCA 62-5-107(c)(2) & (3)(D) – Copy of latest inspection report and license of crematory used not available at time of inspection;
- FTC Rules – Statements of Funeral Goods and Services lack required disclosure language;
- FTC Rules – Casket Price List does not contain an alternate container;
- FTC Rules – Computer generated Statement of Funeral Goods and Services Selected lists impermissible charges;
- FTC Rules – Failure to preserve accurate records subject to inspection (copy of Statement of Funeral Goods and Services in file different that copy given to customer); and
- FTC Rules – Nine caskets in the selection room were priced inconsistent with the Casket Price List

Respondent states that the identification tag was later found under the decedent's foot. The crematory license was lost during renovation and is now on display. The inspector picked up the wrong price list. The correct price list was in the caskets. The discrepancy in the Statement of Funeral Goods and Services

Selected in the file vs. the copy given to the customer was an unintentional mistake. The one in the file was just a computer generated statement.

Complaint History: Numerous

Recommendation: Consent Order assessing total civil penalty of \$750 and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

24. Case No.: L08-FUN-RBS-2008014441

25. Case No.: L08-FUN-RBS-2008014451

These two complaints (one against the establishment and one against the manager's personal license) were opened in response to 2008008251 to investigate whether the respondents had placed an inaccurate Statement of Funeral Goods and Services Selected in other files. The investigation revealed no other instances where this had happened for any customers during the preceding 90 days.

Recommendation: Dismiss.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Paula Bridges

Adopted by voice vote

26. Case No.: L08-FUN-RBS-2008013831

This complaint was filed by another establishment alleging that the Respondent establishment had not paid for services rendered.

The Respondent presented proof of payment to the other establishment.

Complaint History: Numerous

Recommendation: Consent Order assessing \$250 for unprofessional conduct.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

27. Case No.: L08-FUN-RBS-2008020061

28. Case No.: L08-FUN-RBS-2008020091

An inspection on July 28, 2008 revealed the following violations:

- FTC Rules – Five caskets in the selection room were not listed on the Casket Price List;
- FTC Rules – Price of casket in the selection room did not match price on the Casket Price List;
- TCA 62-5-107 – The latest inspection report and license of the crematory used was not available at time of inspection;
- TCA 62-5-306, 308, 316 – Current funeral director and embalmer licenses of the manager were invalid and manager had signed death certificates for six (6) decedents as both the funeral director and embalmer; and
- TCA 62-5-313 – Establishment not managed by a licensed funeral director.

The latest inspection report for the crematory is now on file. The caskets not listed on the Casket Price List had just arrived and were locked and not yet offered to the consumer. Furthermore, the facility had recently acquired inventory from the purchase of another establishment and was in the process of making changes. The Respondent also does not recall receiving written notification that his licenses had expired, although he acknowledges that it is his responsibility.

Complaint History: Two closed.

Recommendation:

- Establishment - Consent order assessing civil penalty of \$100 for each instance in which the unlicensed manager acted as a funeral director or embalmer (total \$1200) and authorization for hearing.
- Individual funeral director/embalmer – Letter of Warning.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

29. Case No.: L08-FUN-RBS-2008021061

30. Case No.: L08-FUN-RBS-2008021071

31. Case No.: L08-FUN-RBS-2008021081

An inspection on July 16, 2008 revealed the following violations:

- TCA 62-5-309 – An unlicensed employee has been engaging in conduct that constitutes funeral directing (arrangement conferences) with customers on at least thirteen (13) occasions; and
- TCA 62-5-317(b) – Aiding and abetting unlicensed conduct.

The Respondent admits that its employee did "attend meetings with family members when (the licensed funeral director) was with other customers. However, all paperwork and directing were completed and overseen by (the licensed funeral director)."

Complaint History: None related

Recommendation:

- Establishment – Consent Order assessing civil penalty of \$100 for each of thirteen (13) violations of TCA 62-5-309 (\$1,300.00).
- Manager – Consent Order assessing civil penalty of \$50 per violation of 62-5-317(b)(6) (\$650.00).
- Unlicensed individual – Letter of Warning.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

32. Case No.: L08-FUN-RBS-2008019411

An inspection on June 18, 2008 revealed the following violations:

- FTC Rules – Price range on the General Price List does not match Casket Price List;
- FTC Rules – Price range on the General Price List does not match Outer Burial Container Price List;
- FTC Rules – Under Immediate Burial, high end range must be added; and
- FTC Rules – Under direct cremation, alternative containers must be added.

Updated price lists have been submitted.

Complaint History: None

Recommendation: Letter of Warning.

A motion was made by Ms. Paula Bridges to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

33. Case No.: L08-FUN-RBS-2008019401

An inspection on June 18, 2008 revealed the following violations:

- FTC Rules – High end range on the General Price List is inconsistent with the Casket Price List;
- FTC Rules – High end range must be added on General Price List under Immediate Burial; and
- FTC Rules – On the General Price List, cardboard containers must be added under direct cremation.

Updated price lists have been submitted.

Complaint History: None

Recommendation: Letter of Warning.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Paula Bridges

Adopted by voice vote

34. Case No.: L08-FUN-RBS-2008021021

An inspection on September 10, 2008 revealed the following violations:

- TCA 62-5-316 – This establishment operated as an establishment on seven (7) occasions during a period of time that the establishment license was invalid due to non-renewal;
- TCA 62-5-107 – Some cremation files inspected lack a copy of the cremation authorization form;
- FTC Rules – Reason for embalming omitted where required on Statement of Funeral Goods and Services Selected; and
- FTC Rules – Statement of Funeral Goods and Services Selected fails to provide description of merchandise and services.

The Respondent attributes the oversight in renewing the license to his serious illness and apologizes to the Board.

Complaint History: One closed

Recommendation: Consent order assessing civil penalty of \$100 for each instance in which the establishment was operated without a valid license (total of \$700.00) and authorization for hearing.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

35. Case No.: L08-FUN-RBS-2008020031

An inspection on July 29, 2008 revealed the following violations:

- TCA 62-5-107 – Cremation authorization form inspected lacks the name, address, and telephone number of the crematory;
- TCA 62-5-107 – Copy of latest inspection report of crematory not available at time of inspection;
- TCA 62-5-107 – Cremation authorization form inspected was not signed by a funeral director; and
- TCA 62-5-316 – Seven (7) services performed during a time that the establishment license was invalid due to non-renewal.

No response received.

Complaint History: 200707159 – Civil penalty of \$500 paid...identical TCA violations plus one FTC violation.

Recommendation: Consent order assessing civil penalty of \$750 for violations of TCA 62-5-107 and \$100 for each of the seven (7) services performed when the establishment license was invalid (total civil penalty of \$1,450.00) and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Eugene Williams

Adopted by voice vote

36. Case No.: L08-FUN-RBS-2008019371

An inspection on June 18, 2008 revealed the following violations:

- TCA 62-5-313(b)(2) – Preparation room floor needs repair; and

- TCA 62-5-317 and 62-5-309 – Aiding or abetting unlicensed conduct by allowing an unlicensed employee to enter into a contract for the arrangement of funeral merchandise and services (three different occasions), as shown by the employee's signature on the Statements of Funeral Goods and Services Selected.

The preparation room floor has been repaired. Signing of the three contracts by an unlicensed person was an accident. The person has been reprimanded and there will be no further problems with this in the future.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

37. Case No.: L08-FUN-RBS-2008019891

During a follow up inspection on August 5, 2008, it was determined that respondent had operated the establishment in violation of TCA 62-5-303(b) by conducting seven (7) funerals during the month of July, 2008 when the establishment license was invalid.

The Respondent states that it did not receive a renewal notice and contacted the Executive Director on June 19th and offered to send in the renewal fee. According to the Respondent, he was advised not to send payment because paperwork also had to be submitted. Respondent indicates that he received the necessary forms "after some delay" and returned them, with the license fee, "immediately", but admits this was after the date of expiration. The Respondent claims that nobody called to inform Respondent that the license renewal would not be processed until late fees were received. Respondent believes that this complaint is a "blatant abuse of power by the Funeral Board", without any merit, and should be "dropped immediately". The Respondent also believes the Board should issue a written apology to the Respondent.

Comments by Legal: The first notice of renewal was mailed to Respondent on May 1, 2008. At the respondent's request, a second renewal notice was sent on June 23, 2008. Rule 0660-3-.04 clearly indicates that the penalty fee for late renewal of an establishment license is \$200. TCA 62-5-316(b) clearly indicates that renewal requires the payment of renewal and penalty fees. The date listed

on the Respondents check for the late fee is July 27, 2008. The check was not received by the Board until July 31, 2008. The establishment license was approved for renewal on August 1, 2008.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$700 (\$100 per violation) for operation of an establishment without a valid license and authorization for hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Jill Horner

Adopted by voice vote

38. Case No.: L08-FUN-RBS-2008019501

An inspection on August 5, 2008 revealed the following violations:

- FTC Rules – High end range under Immediate Burial on the General Price List is incorrect;
- FTC Rules – Under Immediate Burial, price of a casket doesn't match the same casket price on the Casket Price List;
- FTC Rules – Ranges for caskets on the General Price List does not match Casket Price List;
- FTC Rules – Price cards on four caskets in selection room don't match prices on Casket Price List; and
- TCA 62-5-107 – Latest inspection report and license of crematory used not available at time of inspection.

Updated price lists have been submitted. The inspection report was found, but the latest report was received after the inspection.

Complaint History: None.

Recommendation: Letter of Warning.

A motion was made by Mr. Dennis Hamilton to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

At the end of the Legal Report, Staff Attorney, Adrian Chick reported to the Board that the Davidson County Chancery Court upheld nine (9) of the twelve (12) charges that were presented against V. E. Parham and Son Funeral Home in Springfield. The court upheld a civil penalty of \$450 and taxed all costs of the appeal to V. E. Parham and Son Funeral Home.

**ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

**REPORT OF LICENSES ISSUED SEPTEMBER 10, 2008 – OCTOBER 13, 2008
BY EXECUTIVE DIRECTOR AS PER BOARD AUTHORITY**

LICENSEE REPORT:

Establishments

Phillips-Robinson Funeral Home Nashville, TN	Change of Name
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Phillips-Robinson Funeral Home, Hadley Chapel Nashville, TN	Change of Name
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Individuals

Hollyn Donielle Clark Manchester, TN	Funeral/Director/Embalmer
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Jimmy Allen Cookeville, TN	Funeral Director
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CLOSED ESTABLISHMENT REPORT:

Three (3) establishments have reported closing since the last board meeting:

- **Heavenly Gates Funeral Home, 420 North Lindell Street, Martin, TN**
- **Gilliam F. Jones Funeral Home, 8 Oak Street, Stanton, TN**
- **S. W. Qualls & Company, 479 Vance Avenue, Memphis, TN**

DISCIPLINARY ACTION REPORT:

The Board has previously authorized these consent orders and civil penalties. The Consent Orders have been signed and the civil penalties paid by the respondents. The Executive Director requests the Board's acceptance of the following consent orders.

Complaint No. 2008009791

Violation: Ventilation fan in embalming room was not operable, current licenses of establishment and funeral director were not available for inspection, failure to maintain a copy of license and the latest inspection report for the crematory that the funeral home uses and reason for embalming was not listed where required on Statements of Funeral Goods and Services Selected

Action: \$500 Civil Penalty

Complaint No. 2008010821

Violation: A cremation in process attended only by an apprentice funeral director and reason for embalming was not listed where required on Statements of Funeral Goods and Services Selected

Action: \$750 Civil Penalty

Complaint No. 2008012161

Violation: Misleading advertising (advertisement fails to show a specific price and an itemized listing of each and every item)

Action: \$350 Civil Penalty

Complaint No. 2008013711

Violation: Unlawful for any person not a registered funeral director to engage in funeral directing (an unlicensed employee signed for cremated human remains as "funeral director"), failure to retain a copy of the authorization to cremate and prices charged on Statement of Funeral Goods and Services were higher than prices listed on General Price List

Action: \$350 Civil Penalty

Complaint No. 2008005271

Violation: Unprofessional conduct (manager of establishment completed the medical certification section and forged the Medical Examiner's signature on Certificate of Death)

Action: \$750 Civil Penalty

Complaint No. 2008005261

Violation: Unprofessional conduct (funeral director completed the medical certification section and forgery of the medical examiner's signature on Certificate of Death)

Action: \$1000 Civil Penalty and suspension of funeral director's license for 30 days

Complaint No. 2008013671

Violation: Unlawful for any person not a registered funeral director to engage in funeral directing (a Statement of Funeral Goods and Services Selected was signed by an apprentice funeral director)

and Statement of Funeral Goods and Services Selected reflected prices for embalming, hearse, and use of facilities and staff greater than the prices on the General Price List

Action: \$500 Civil Penalty

Complaint No. 2008010931

Violation: Unprofessional conduct (changing terms of payment after consumer purchased casket from a third party merchandise retailer instead of funeral establishment) and provider may not condition furnishing of any funeral good or service upon the purchase of any other funeral good or service

Action: \$1000 Civil Penalty

Complaint No. 2007071851

Violation: Unprofessional conduct (stated to the family that the embalming was unsuccessful due to an autopsy that had been performed on the deceased when no autopsy had been done)

Action: \$750 Civil Penalty plus an additional \$500 for Investigatory Costs

Complaint No. 2007077931

Violation: Unreasonably refused to promptly surrender the custody of a dead human body to a person lawfully entitled to possession of the remains

Action: \$500 Civil Penalty

Complaint No. 2008009831

Violation: Price range on the General Price List did not match amounts on Casket Price List

Action: \$250 Civil Penalty

A motion was made by Mr. David Murphy to approve the Executive Director's request for the Board's acceptance of the above listed Consent Orders.

Seconded by Mr. Eugene Williams

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of October 10, 2008, there were 89 open complaints.

REVENUES AND EXPENSES REPORT:

Revenues and expenses of the Board of Funeral Directors and Embalmers for the period of July 1, 2007 through June 30, 2008:

FY2007 Reserve **(\$184,778.30)**

Net Revenues:	\$997,834.21
Expenditures:	\$436,434.81
Administrative Costbacks:	\$195,030.90
FY 2008 Balance	\$366,368.50

FY2008 Reserve Account: **\$181,590.20**

Administrative Costbacks for FY2007-2008 are categorized as follows:

Department Administration:	\$ 83,680.95
Regulatory Board Administration:	\$ 65,802.93
Legal	\$ 39,614.03
Investigation	\$ 5,932.99
Total	\$195,030.90

On June 30, 2003, the Board had an accumulative deficit of \$1,051,764.00, and without raising fees, on June 30, 2008, the Board has a reserve of \$181,590.20.

APPROVAL OF INDIVIDUAL LICENSE:

Upon motion, based upon application record, the following individual was approved for licensure:

James William Ford, Jr.
Somerville, TN

Funeral Director
Reapplication

DENIAL OF ESTABLISHMENT LICENSE:

CREMATION AND FUNERAL SERVICES OF TENNESSEE
572 HIGHWAY 70, SUITE 102
PEGRAM, TN

New Establishment
Ownership: Sole Proprietor
Owner: Jason Mosier of Pegram, Tennessee

President Steve Murphy recused himself from the consideration of this application and Vice President David Murphy chaired the duties regarding this application.

A motion was made by Ms. Jill Horner to deny the application for licensure of this establishment based on Tennessee Code Annotated § 62-5-313(a).

Seconded by Ms. Paula Bridges

Adopted by voice vote

ADJOURN:

A motion was made by Ms. Paula Bridges to adjourn.

Seconded by Mr. David Murphy

Adopted by voice vote

There being no further business, the meeting was adjourned by President Steve Murphy at 11:58 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director